

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 32/2009**

Judgment pronounced on: 12th August, 2009

DHRUV KUMAR GUPTA Appellant

Through : Mr. S.P. Pandey, Advocate

Versus

UNION OF INDIA & ORS. Respondents

Through : Ms. Charul Sarin, Advocate for
DDA.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

J U D G M E N T

ARUNA SURESH, J.

1. This is a second appeal preferred by the appellant assailing the judgment and decree dated 24.11.2008 in RCA No.25/2004 passed by the Additional District Judge, Delhi whereby the first appeal of the appellant challenging the order of the trial court was dismissed.

2. Appellant claimed himself to be owner and in possession of land measuring 6 Bigha 1 Biswa in khasra No.748, 9 Bigha 19 biswa in khasra No.753, 6 Bigha 12 biswa in khasra No.754, totaling 22 Bigha 12 biswa in Village Mehrauli. He sought a relief of injunction against the respondents from dispossessing him from the suit land on the plea that he is still in possession of the suit land and his possession cannot be disturbed and DDA has no right to demolish the structure which has been raised by the appellant in the suit land.
3. On 13.11.1959 a notification was issued under Section 4 of the Land Acquisition Act (hereinafter referred to as 'Act') for the acquisition of the suit land followed by another declaration dated 7.12.1966 issued under Section 6 of the Act. On 25.3.1983 award pertaining to the said acquisition being award No.83/82-83 was published. Appellant challenged the acquisition of the land and filed a Writ Petition (Civil) No.3615/1982 in this court. The said Writ Petition was dismissed. Against the said dismissal order, appellant filed SLP No.7906 of

1996. The said SLP was also dismissed. Accordingly, the acquisition of the suit land by the respondent/Union of India was upheld to be in accordance with law. With the acquisition of land having attained finality, the possession of the land vested with the Govt. On 14.3.1997, Land and Building Department of the Govt. handed over the possession of the suit land to respondent/DDA.

4. After the DDA came in possession of the said land, the appellant filed suit No.576/1997 seeking permanent injunction against the respondents from raising boundary wall on the suit land and also from dispossessing the appellant from the suit land. After the pleadings were complete on 23.7.2001, the trial court framed following preliminary issue:-

“Whether this Court has the jurisdiction to try and entertain the present suit?”

5. Vide its detailed judgment and decree dated 19.1.2004, the trial court dismissed the suit of the appellant, firstly on the ground that once the land was acquired and possession taken, the property vested with the Govt. free from all encumbrances

and therefore no notice was required to be served upon the appellant before carrying out demolition and secondly that since the plaintiff/appellant was not in possession of the suit land, the suit for permanent injunction simplicitor was not maintainable.

6. The judgment and decree of the trial court was challenged by the appellant in RCA No.25/2004 which was filed by him in June, 2004. The First Appellate Court dismissed the appeal vide its judgment dated 24.11.2008 with the observation that the trial court was within its right to frame preliminary issue regarding the jurisdiction to entertain the suit and treat it as preliminary issue. Hence, this Second Appeal under Section 100 of the CPC.
7. I have heard Mr. S.P. Pandey, Advocate appearing for the appellant, Ms. Charul Sarin Advocate for respondent/DDA and have also perused the judgment of the trial court as well as of the First Appellate Court and other documents placed on the record.

8. Order 14 Rule 2 CPC empowers the court to pronounce judgment on all issues. However, where issues both of law and of fact arise in the same suit and the court is of the opinion that the case or any part thereof can be disposed of on an issue of law only, it may try that issue first if that issue relates to the jurisdiction of the court or a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issue until after that issue has been determined.
9. Preliminary issue framed in this case by the trial court pertains to the jurisdiction of the civil court to entertain the suit filed by the appellant. Hence, the trial court was within its right to frame preliminary issue regarding its jurisdiction to entertain the suit and decide it first before adjudicating upon the merits of the case. Therefore, the appeal challenging the courts power to frame a preliminary issue and decide the same does not raise any substantial question of law.

10. The other grievance of the appellant in this appeal is that an issue was framed on 20/5/1999 before framing the preliminary issue regarding the jurisdiction as to *whether plaintiff has any existing cause of action in his favour*. But this issue could not have been treated as preliminary issue by the court as it does not relate to any question of law, as it is a mix question of law and facts and should have been decided by the court after affording parties an opportunity to lead their respective evidence. Again, I find no substance in these submissions.
11. Civil court has no jurisdiction to try a case which by necessary implication arises out of Land Acquisition Act. Section 9 of CPC vests jurisdiction in a Civil Court to try all the civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure laid down under the Act is a special procedure with a view to envisage to effectuate public purpose, compulsorily acquiring the land for use of public purpose. The dissatisfied claimant after the notification issued under Section 4 and 6 and

pronouncement of the Award, has been specifically provided with remedy of reference under Section 18 and a further appeal under Section 54 of the Act. Once possession is taken, it stands vested under Section 16 of the act, in the State with absolute title free from all encumbrances.

12. In '***Laxmi Chand & Ors. vs. Gram Panchayat, Kararia & Ors., (1996) 7 SCC 218***' the Supreme Court observed:-

"3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the civil court."

13. The trial court dealt with this aspect of the submission in para 8 of its judgment in the following manner:-

“8. The provisions of Land Acquisition Act clearly bars the jurisdiction of Civil Courts to try and entertain any Civil Suit even if owner and any other person of the acquired land remains in possession of the acquired land, as the status of the said owner or any other person after the Acquisition of said land under Land Acquisition would be deemed to be unauthorized for the plaintiff under Section 5 of P.P. Act.”

14. The trial court relied upon **AIR 1955 SC 1955** to come to the conclusion that jurisdiction of the civil court was barred to entertain the suit filed by the plaintiff. In the cited case it was observed that by necessary implication, power of civil court to take cognizance of case under Section 9 of CPC stands excluded and civil court has no jurisdiction to go into the question of validity or legality of notification under Section 4 and declaration issued under Section 6 of the Act, except the High Court.

15. As discussed above, the appellant exhausted its remedy by filing writ petition challenging the acquisition of the land, which was dismissed and finally when SLP against the said order of the High Court was also dismissed by the Supreme Court.
16. Therefore, I find that the observations of the trial court as upheld by the First Appellate Court, as regards its jurisdiction are in accordance with law and no substantial question of law is raised from the said findings.
17. Another substantial question of law as formulated in the appeal is *“Whether the order dated 28.01.1980 passed by Executive Officer (DA), DDA bearing DA No.125(1) 79 to the effect that under the instructions of Govt. of India and the present policy of the DDA as contained in Govt. of India’s letter No.J.3037/113/74/UDI/IIB dated 16.02.1977, no structure constructed prior to June 1977, is to be demolished and therefore DDA withdrew the notice dated 5-11-79 issued to Shri Tilak Raj (father of the appellant) in respect of this land u/s. 30(1) of the*

Delhi Development Act, 1957, does not amount to vindicating the case of the appellant?”

18. It is argued that the suit land was notified in 1973 in Govt. Gazette as “Development Area” but later on the same was de-notified from Development Area in Govt. Gazette in the year 1987 and therefore, in view of this de-notification of the suit land from development area, civil court has the jurisdiction to entertain the suit.
19. These submissions do not raise any substantial question of law. Once proceedings under Section 4 and 6 of the Act were complete and award was pronounced, any de-notification of the suit land from development area does not nullify notification under Section 4 and declaration under Section 6 of the Act. No notification under Section 48 of the Act withdrawing acquisition of land was ever issued by the Govt.
20. The possession of the suit land was taken by the Land and Building Department which was handed over to the DDA after the award was passed. Therefore, the acquisition became final when the

possession was taken by the Land and Building Department. On taking over possession of the land, the land vested in the Govt. free from all encumbrances.

21. Order dated 28.1.1980 was passed by the Executive Officer (DA) after declaration under Section 6 of the Act on 7.12.1966. This order therefore is non-est against the acquired suit land.
22. Therefore, under the facts of the case no substantial question of law is to be formulated. Appellant cannot be allowed to challenge acquisition of the land again by way of this suit which, under the circumstances of this case has been rightly rejected by the trial court and the Appellate court for want of jurisdiction. Reference is made to ***Laxmi Chand's case (supra)*** and '***Nagin Chand Godha vs. Union of India & Ors., 2003 (70) DRJ 721 (DB.)***.
23. As regards withdrawal of the notice dated 5.11.1979 which was issued to Tilak Raj, predecessor interest of the appellant, at the outset it can be safely said that withdrawal of this notice did not in any manner de-notified the acquisition proceedings of the Land

& Building Department pertaining to the land in question. It is argued that the possession, if any, taken by the respondents was symbolic and appellant is still in physical possession of the house built on the said land. This argument is also not sustainable as the possession of the land was taken by Land & Building Department in accordance with the law and procedure. After taking over the possession the Govt. becomes its absolute owner, free from all encumbrances.

24. Therefore physical possession of the appellant, if any can be considered as possession of a trustee on behalf of public at large or a trespasser and, therefore, this itself cannot be a ground to contend that the Govt. has not taken the possession of the suit land. Appellant has no right to claim the relief sought alleging that actual possession was not taken and therefore he should be protected.

25. In '**Balwant Narayan Bhagde vs. M.D. Bhagwat & Ors., AIR 1975 SC 1767**', in similar circumstances it was observed:-

“26. In a proceeding under the Act for acquisition of land all

interests are wiped out. Actual possession of the land becomes necessary for its use for the public purpose for which it has been acquired. Therefore, the taking of possession under the Act cannot be "symbolical" in the sense as generally understood in Civil Law. Surely it cannot be a possession merely on paper. What is required under the Act is the taking of actual possession on the spot. In the eyes of law the taking of possession will have the effect of transferring possession from the owner or the occupant of the land to the Government."

It was further observed:-

"28.....It is, therefore, clear that taking of possession within the meaning of S.16 or 17(1) means taking of possession on the spot. It is neither a possession on paper nor a "symbolical" possession as generally understood in Civil Law. But the question is what is the mode of taking possession? The Act is silent on the point. Unless possession is taken by the written agreement of the party concerned the mode of taking possession obviously would be for the authority to go upon the land and to do some act which would indicate that the authority has taken possession of the land. It may be in the form of a declaration by beat of drum or otherwise or by hanging a written declaration on the spot

that the authority has taken possession of the land. The presence of the owner or the occupant of the land to effectuate the taking of possession is not necessary. No further notice beyond that under Section 9 (1) of the Act is required. When possession has been taken, the owner or the occupant of the land is dispossessed. Once possession has been taken the land vests in the Government.”

26. Thus, it is clear that taking of possession under the Act means taking of possession on the spot. It is neither a possession on paper nor a symbolic possession as is generally understood in Civil Law.
27. In ***Nagin Chand Godha’s case (supra)*** while referring to ***Balwant Narayan Bhagde’s case (supra)*** this court observed in para 10 as under:-

“10..... If a person is enjoying the possession after the possession has been taken, the person is enjoying the possession as a trustee on behalf of the public at large and that by itself cannot be a ground to contend that the possession has not been taken. It is the duty of the person who is occupying the property to look after the property and to see that the property is not defaced or devalued by himself or by others. He cannot subsequently

come to the Court to say that actual possession is not taken and therefore he should be protected and land be denotified.”

28. The first Appellate Court while dealing with the question of appellant being in physical possession and also whether possession of the suit land was taken by the Govt. within the meaning of Section 17 of the Act observed:-

“..... I have gone through the Khasra Girdawri which shows that the possession of the land had been taken in the year 2004 and the building existing over the land had been demolished. It is not disputed that the first Kabza Karwahi under the Land Acquisition Act in respect of the land took place on 3.4.1996; Second Kabza Karwahi took place on 14.3.1997; Third Kabza Karwahi on 31.3.1997 and Last Kabza Karwahi on 1.7.2004.....”

29. In the light of discussion as above, I conclude that no substantial question of law can be formulated under the facts and circumstances of this case. Therefore, the appeal is dismissed in limini.

30. CM APPL.3047/2009 for stay also stands dismissed.

**(ARUNA SURESH)
JUDGE**

**AUGUST 12, 2009
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